

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3777 of 1984

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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DUDABHAI PITAMBARBHAI SUMESARA

Versus

STATE OF GUJARAT & OTHERS

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Appearance:

MR ARUN H MEHTA for the Petitioner

MR HL JANI for the Respondents

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CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 10/09/96

ORAL JUDGEMENT

1. The petitioner was appointed as Unarmed Police Constable in the Police department of this State on August 31, 1970. The petitioner was involved in a criminal case for the offences punishable under sec. 307, 353 A of I.P.C.. read with sec. 34 of the I.P.C. and sec. 25(1)(c) of the Indian Arms Act and sec. 135 of the Bombay Police Act. In that criminal case, the petitioner has been acquitted by the Additional Sessions

Judge, Surendranagar under his judgment dated 28th May, 1982.

2. The petitioner in this petition has prayed for issuance of direction to the respondents to promote him to the post of Head Constable and Jamadar from the deemed date. In the prayer clause he has not mentioned the deemed date of promotion, but in para no.6 he has mentioned that the junior persons have been promoted in the years 1977 to 1982.

3. The reply to the writ petition has been filed by the respondents and they have come up with a case that the case of the promotion of the petitioner for Head Constable Gr. II was considered by the Departmental Selection Committee in its meetings held on 12-11-1976, 19-6-1978, 12-2-1979, 24-11-1979, 5-3-1981, 3-11-1981, 4-2-1982, 19-1-1983 and 5-12-1983, but having regard to his unsatisfactory service record, he was not recommended for promotion. The respondents have given out that as many as five punishments are there in the service record of the petitioner. The respondents have admitted that the criteria for promotion was seniority cum merit.

4. The learned counsel for the petitioner contended that the criteria for promotion was seniority cum merit and as such, the petitioner should have been given the promotion. The case of the petitioner was not fairly and properly considered by the Departmental Selection Committee.

5. On the other hand, the counsel for the respondents contended that even if the criteria for promotion was seniority cum merit, the record of the petitioner should have been averaged atleast, but there were five punishments in his service record, and as such, he has rightly been not recommended for promotion. The counsel for the respondents further contended that the juniors were promoted in the year 1977 and onwards whereas the petition has been filed by the petitioner in the year 1984, and as such, it suffers from the vice of delay and latches.

6. I have given my thoughtful consideration to the submissions made by the learned counsel for the parties. The petitioner has not filed the rejoinder to the reply, and as such, the averments made by the respondents that his case has been considered for promotion on the dates as given above, and he was given five punishments stands uncontroverted. The petitioner has concealed the material fact from this court that there were five

punishments in his service record. This was the relevant and material fact and it should have been disclosed. It is certainly a positive disqualification attached to the petitioner and in the presence of the same, no illegality has been committed by the Departmental Selection Committee to adjudge him unsuitable for promotion. Even if the criteria for promotion was seniority cum merit, the petitioner should have an average service record, but if the record of the petitioner is blameworthy how he was justified to lay a claim for promotion. It is not a case where the decision of the Departmental Selection Committee to adjudge him unsuitable for promotion is perverse. This court will not sit as a court of appeal over the decision of the Departmental Selection Committee. This decision is only questionable where the petitioner has come up with a case of malafides which is not a case here. The petitioner has no case whatsoever in his favour. This Special Civil Application is devoid of any substance and the same is dismissed. Rule discharged. No order as to costs.

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